IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9685 OF 2004

M/s. Namchand Omkarmal and Sons ..Petitioner.

Vs.

Hasmukhalal Ambalal Shah ..Respondent.

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Mr. Y.S. Jahagirdar, Senior Advocate with Mr. S.A. Rajeshirke for the Petitioner.

Mr. A.K. Abhyankar, Senior Advocate with Mr. N.V. Mhatre for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

11th July, 2006.

P.C. :

Rule, by consent of Counsel made returnable forthwith. With the consent of Counsel and at their request, taken up for final hearing.

1. The decree for eviction on the ground of the bonafide requirement of the landlord was confirmed in appeal by the Additional District Judge, Pune on 28th April, 1998. The Petition filed by the tenant being Writ Petition 1345 of 1995 was allowed by consent of the parties and the matter was remanded back to the appellate court. Consent Minutes of the order were filed before this

Court by the parties in pursuance of which liberty was granted to the parties to adduce oral and documentary evidence on commission. That exercise was undertaken by the parties before the Appellate Court. The ground in the present case is that the landlord requires the premises for enabling his two sons to set up an engineering design and consultancy business. The entire discussion of the Appellate Court is contained in paragraphs 13 and 14 of the judgment which read as follows :

> "13. In order to appreciate the submissions of learned counsel, I have perused the pleadings of the parties and the evidence on record carefully. The plaintiff in his evidence in the trial court as well as in his additional evidence adduced in this court has deposed that, he himself and his 2 sons are engineers. His 2 sons are unemployed and intending to start the business of engineering designs and consultancy and also to start teaching classes in the suit premises. So also the plaintiff in his additional evidence adduced in this court has clearly stated that, the registered company named as "Chartered Industrial Rebuilders and Appraiser Company Pvt. Ltd." has been closed existence on papers only. The plaintiff and his 2 sons require the suit premises personally for running business and not for the said company. It is seen that, there is no satisfactory evidence on record to show that, either plaintiff or defendant have acquired any commercial premises during pendency of the proceeding.
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> 14. Perusal of evidence adduced by the defendant reveals that, there is nothing on record to show that, both the sons of the plaintiff are running any business independently. The evidence on record further shows that, both the sons of the plaintiff are engineers and they

> want to start business of engineering designs and consultancy and also to start teaching classes in the suit premises. Therefore, in my view, there is no reason to disbelieve the case and the evidence of the plaintiff that, the plaintiff requires the suit premises reasonably and bonafide for their personal use and occupation. So also the evidence placed on record by the defendant does not show that, the plaintiff does not require the suit premises bonafide and reasonably. Hence, I find that, the plaintiff has proved that, he requires the suit premises reasonably and bonafide for his personal use and occupation. Accordingly, I answer point No.1 in the affirmative."

2. Counsel appearing for the Petitioner has submitted that after the earlier order of remand, the parties adduced additional evidence before the Appellate Court. The following admissions were made during the course of the cross examination of the landlord :

> "My sons have purchased the property bearing C. T. S. No.927-B, Budhwar Peth, in the year 1989. At the time of purchase, the said property consisted of ground floor plus first floor and an attic. (At this time the Learned Advocate for the Plaintiff objected that the said fact is nowhere pleaded in the Written statement or the Additional Written Statement). The land beneath the said property is approx. 980 Sq. Fts. and 1.5 F. S.I. is available there. The old structure is not in existence today and its place the new construction is raised in the year 2001. There is about 1900 Sq. Fts. construction in the said property and owned by my sons. My sons have not entered into any agreement in writing with any body,

in respect of the said property."

3. There is merit in the submission that the Appellate Court ought to have dealt with the evidence in its entirety in its impugned order. It is clear, in the facts and circumstances of the case, that the Appellate Court overlooked a material part of the evidence. It cannot be suggested that the evidence which has been overlooked is not material or relevant to the question as to whether the premises are reasonably and bonafide required by the landlord. In the circumstances, in as much as there has been a clear and patent overlooking of material aspects of the evidence on the record, I am of the view that an order of remand is warranted. The exercise of the supervisory jurisdiction under Article 227 is therefore necessitated.

4. In order to facilitate a fresh determination, the impugned order of the Additional District Judge dated 16th August, 2004 is quashed and set aside. Civil Appeal 639 of 1993 is restored to the file of the Additional District Judge, Pune. The parties shall appear before the Additional District Judge for necessary directions on 31st July, 2006. The Appellate Court shall endeavour to dispose of the

appeal expeditiously after hearing the parties, preferably within a period of six months thereafter. The Petition is accordingly disposed of. There shall be no order as to costs.